Nos. 89-556, 89-557 and 89-771

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

STATE OF LOUISIANA, *ex rel.* WILLIAM J. GUSTE, JR., ATTORNEY GENERAL OF THE STATE OF LOUISIANA,
Appellant,

STATE OF LOUISIANA, *ex rel.* CHARLES E. "BUDDY" ROEMER, III, GOVERNOR OF THE STATE OF LOUISIANA, *et al.*,
Appellants,

BOARD OF SUPERVISORS OF SOUTHERN UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE,
Appellants,

v.

UNITED STATES OF AMERICA,
Appellee.

On Appeal from a Three-Judge United States District Court for the Eastern District of Louisiana

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RESPONSE TO MOTION OF THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

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Respondent, the State of Louisiana ("State"), through its Governor, Charles E. "Buddy" Roemer, III, respectfully asks this Court to deny in part the Motion of the NAACP Legal Defense and Education Fund, Inc. for Leave to File Brief as *Amicus Curiae* Urging Dismissal

of Appeal, filed on December 8, 1989 ("LDF Motion and Brief").

The State consented to the filing by the NAACP Legal Defense and Education Fund, Inc. ("LDF") of a brief which dealt with the issue of whether this Court has jurisdiction to hear this case on direct appeal. LDF, however, has not limited its brief to the question of jurisdiction. Instead, LDF has gone beyond the issue to which consent was given by asking this Court "to exercise its authority under the All Writs Act, 28 U.S.C. § 1651, to maintain its stay of the district court's order during the pending of the appellate proceedings." LDF Motion and Brief at 28-29.

Moreover, Rule 44.4 of the Supreme Court Rules provides in part that "[a]n application for a stay or injunction to a Justice of this Court shall not be entertained, except in the most extraordinary circumstances, unless application for the relief sought first has been made to the appropriate court or courts below, or to a judge or judges thereof."

If this Court dismisses the appeal in the instant case for lack of jurisdiction, then the decision of the three-judge district court will be heard on appeal by the United States Court of Appeals for the Fifth Circuit. The court of appeals, however, has not been presented with an application for a stay of the district court's orders. *Cf. Dolman v. United States*, 439 U.S. 1395 (1978) (stay application denied under predecessor to Rule 44 because applicants failed to request stay from court of appeals). Additionally, applicants for the stay in the instant case have failed even to claim "most extraordinary circumstances."

Furthermore, LDF has strenuously argued that the Fifth Circuit's viewpoint is of the utmost importance in helping this Court reach a decision. *See* LDF Motion and Brief at 5 ("direct review from the district court's ap-

proval of the Special Master's report . . . would be imprudent and likely to impair this Court's ability fully to consider and resolve the weighty issues [involved]"). LDF, however, has failed to recognize that this same logic applies with equal force in regard to an application for a stay. LDF's own argument inescapably leads to the conclusion that in the instant case an application for a stay first should be filed with the court of appeals so this Court can benefit from its viewpoint.

For these reasons, the State requests this Court to deny that part of the LDF Motion and Brief asking the Court to maintain the current stay.

Respectfully submitted,

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